



Annual Report
of the
Saskatchewan
Conflict of Interest Commissioner

2005

Saskatchewan
Conflict of Interest
Commissioner



SASKATCHEWAN

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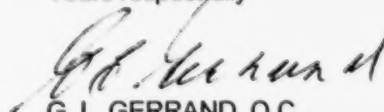
The Honourable Myron Kowalsky,
Speaker of the Legislative Assembly
of Saskatchewan,
Room 129 Legislative Building,
Regina, Saskatchewan.
S4S 0B3

Dear Mister Speaker:

I have the pleasure and honour to present to you the Annual Report of the Office of the Conflict of Interest Commissioner for the period of January 1, 2005 to December 31, 2005.

This Report is submitted pursuant to Section 25 of *The Members' Conflict of Interest Act*, Chapter M-11.11, Statutes of Saskatchewan, 1993.

Yours respectfully


G. L. GERRAND, Q.C.
Commissioner



ANNUAL REPORT

To the Legislative Assembly For the Year Ending 2005

INTRODUCTION

I am required to submit to the Speaker an annual report as provided by Section 25 of *The Members' Conflict of Interest Act* ("the Act"), Chapter M-11.11 S.S. 1993 as amended by S.S. 1998 c.P-42.1 and 2002 c. 52.

Section 25 provides as follows:

"25(1) In accordance with *The Tabling of Documents Act, 1991*, the commissioner shall in each year submit to the Speaker an annual report describing the progress and activities of the commissioner in the previous year.

(2) In accordance with *The Tabling of Documents Act, 1991*, the Speaker shall lay before the Assembly each report received by the Speaker pursuant to subsection (1)."

This is the sixth annual report I have had the privilege of submitting to the Speaker. I was appointed Conflict of Interest Commissioner by unanimous resolution of the Legislative Assembly of Saskatchewan for a five year term on May 24, 2000. I was reappointed to this position by unanimous resolution of the Assembly of April 25, 2005.

I appreciate the confidence displayed in me by the Members through their resolutions and I am satisfied that we, the Members and I, have worked well together to achieve, in large measure, the objectives of the Act. No Member has been found to be in a conflict of interest position during my six year term as Commissioner nor has any Member been in breach of his or her obligations under the Act, except incidents of timing delays on the part of a few Members.

DISCLOSURE OBLIGATIONS OF MEMBERS UNDER THE ACT

Members of the Legislative Assembly are annually required to complete and submit to me a written statement disclosing details of the Member's financial affairs and the financial affairs of the Member's family and certain corporations in which they have an interest. These statements are confidential and for my review only to assist me in determining there is no conflict of interest between the public duty of the Member and their private interests.

By amendments to the Act in 2002, Members were permitted to seek my permission to file a short form of Disclosure Statement, after having initially filed the detailed complete form following election. In the year 2005, I permitted exactly half of the Members, 29 in number, to prepare and file the short form of Disclosure Statement based on their assertion there had been no material change in their financial affairs since the filing of the previous form or that there had been minor changes as disclosed.

The provision for follow up shorter forms of Disclosure Statement has worked reasonably well. Saskatchewan is the only jurisdiction in Canada that has a provision for the filing of a shorter form of disclosure following the filing of a complete Disclosure Statement in appropriate circumstance.

Members have the further obligation to meet and consult with me following the filing of their completed Disclosure Statements. The purpose of the consultation is to ensure that the Disclosure Statement has been adequately completed by the Member and for me to provide advice and direction to Members respecting the Member's obligations under the *Act*.

Each of the fifty-eight Members of the Legislature complied with the disclosure and consultation provisions of the *Act* in the year 2005, although a few Members were tardy as to the timeliness of their compliance.

COMMISSIONER'S OPINION AND ADVICE

Section 27 of the *Act* sets out the means whereby a Member may request an opinion and recommendation from me in respect to any matter that relates to the obligations of the Member under the *Act*. Each year I receive several requests for advice and recommendations from Members in this regard and the year 2005 was no exception.

Under Section 27 of the *Act*, I am permitted to make whatever inquiries I deem appropriate for the purpose of providing the Member with a written opinion and recommendation. Several Members have sought my advice and recommendations under Section 27 prior to embarking on some particular course of action in relation to their duties of office. Upon following my written opinion and recommendations, the Members are reasonably insulated from subsequent criticism.

INQUIRY AT THE REQUEST OF TED MERRIMAN, MLA (SASKATOON NORTHWEST) WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE ACT BY THE HONOURABLE DEB HIGGINS, MLA (MOOSE JAW WAKAMOW

During the latter days of 2004, Ted Merriman, MLA for Saskatoon Northwest ("Merriman") requested that I conduct an inquiry into the conduct of the Honourable Deb Higgins ("Minister Higgins") with regard to a specific matter. I did conduct an inquiry and provided an opinion with respect to that inquiry on February 22, 2005.

The inquiry resulted from a request by Merriman pursuant to Section 29 of the *Act* for an opinion from me in relation to certain actions on the part of Minister Higgins. Sections 29(1) and (2) of the *Act* provide as follows:

"29(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may request, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member who makes a request for an opinion pursuant to subsection (1) shall promptly provide the member who is the subject of the request with a copy of the application."

The concern outlined by Merriman in his referral letter to me related to the fact that Minister Higgins had, prior to the 2003 provincial election, received substantial financial contributions to her election campaign from labour unions and labour related organizations and that following her election and appointment as Minister of Labour, initiated proposed changes to *The Labour Standards Act* and *The Trade Union Act*, which changes were presumably for the benefit of labour interests that had made financial contributions to her during the previous general election.

The assertion of Merriman was to the effect that Minister Higgins enhanced her "private interest" in advancing for consideration the labour legislation previously referred to and thereby contravened the provisions of Section 3 of the *Act* as they relate to conflict of interest. Section 3 of the *Act* sets forth the following description of conflict of interest:

"3 For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate."

In the subject opinion, I reviewed the judicial history of the expression "private interest" as used in the *Act* and the import of the exceptions to the expression "private interest" as set forth in the definition section of the *Act*.

In concluding there was no breach of the *Act* by Minister Higgins in respect to the situation briefly described previously, I concluded that "the provisions of the *Act* mandate a distinction between private interests and political interests". I observed that the definition clause of the *Act* clearly exempts from inclusion in any consideration of the existence of a private interest, a "decision...that is of general public application" or "that affects a person as one of a broad class of persons". I concluded that the decisions of Minister Higgins respecting the legislation in question clearly fell into this category.

I dealt with the characterization that should be attributed to the political contributions given to Minister Higgins' campaign as follows:

"32. Contributions to individuals or political parties are supported by the tax system and are governed in great detail by *The Elections Act, 1996* under the direction of the Chief Electoral Officer (who is also an independent officer of the Legislative Assembly). That Act also sets out specific dollar limits within which any candidate must operate. Accordingly, there is no capacity for any individual to "buy" an election in the sense that there are legislatively chosen limits for contributions. In addition, *The Elections Act, 1996* specifically sets out who may make such contributions, and in Saskatchewan that includes unions and corporate bodies. This is a choice freely made by the Legislative Assembly and one that should not be functionally reversed by interpretation of *The Members' Conflict of Interest Act*.

33 The financial contributions made to Minister Higgins by the trade unions and labour related organizations during the November, 2003, provincial general election were certainly beneficial to Minister Higgins personally. These financial contributions clearly went a long way in paying for the expenses incurred in the conducting of the campaign of Minister Higgins and there can be little doubt that these financial contributions were for her personal benefit as well as the benefit of the New Democratic Party that she represented. However, in the factual circumstances of this complaint, I am of the opinion that these financial contributions do not constitute a "private interest" as contemplated by the provisions of the Act and specifically Sections 3, 4 and 5."

With respect to the merits of the concerns expressed by Mr. Merriman, I concluded as follows at paragraph 46 of my Opinion.

"46. The Legislature did not intend that the Act impede the traditional political process where the governing party pursues its legislative program while in power and is rewarded or otherwise by the electorate at the subsequent general election. Many of the aspects of Minister Higgins' decisions respecting legislation are, at the time of the writing of this opinion, a subject of public debate and criticism. I make no comment on the merits of the decisions respecting legislation. That issue is for public debate and ballot box action. My jurisdiction is confined to opining on whether a Member's conduct is in accord with the precise provisions of the Act.

I expressed the view by way of conclusion to my opinion that Merriman was correct in raising the issue with me as I was unaware of this specific issue having been previously considered in other Canadian jurisdictions.

CONVENTIONS AND CONFERENCES

In September of 2005, I attended the annual meeting of the Canadian Conflict of Interest Network ("CCOIN") which was held at Edmonton, Alberta. This conference afforded me an opportunity to meet with and exchange views and information with other Conflict of Interest Commissioners and Ethics Counsellors from the other Canadian Provinces, Territories, the Parliament of Canada and the Senate of Canada.

EXEMPTIONS GRANTED BY THE COMMISSIONER UNDER SECTION 34 OF THE ACT

No exemptions were granted to any former Member pursuant to the provisions of Section 34 of the Act in 2005.

BUDGET AND EXPENDITURE OF THE OFFICE OF THE COMMISSIONER

The budget for the Office of the Commissioner for the year 2005 was \$122,000.00. This budgetary amount has not changed since my appointment in 2000. The sum of \$113,919.94 was actually expended in the operation of the office.

The Office of the Conflict Interest Commission has no employee other than myself. Contractual arrangements are made for the providing of secretarial service to me as required. I wish to thank Orla Cuddington for the continued clerical and

